

General Information Letter: Computation of estimated tax and petition for waiver of failure to pay penalty.

February 23, 1999

Dear:

This is in response to your letter dated December 18, 1998. Given the nature of your inquiry and the information you provide, I am responding with a General Information Letter. This letter is not to be taken as a statement of Department policy or as a binding ruling by the Department. As general information gathered in response to your particular questions, however, I hope that it is helpful to you. See 86 Ill. Adm. Code 1200.120(b) and (c).

In your letter you have stated the following:

I have prepared the taxpayer's income tax return for approximately 30 years. He has always paid estimated tax according to the law.

He did not pay 1997 estimated tax because I advised him that he was not required to do so based on his 1996 adjusted gross income. Taking his 1996 adjusted gross income, exemptions and credits, and using the estimate tax worksheet for 1997 the amount on Line 9 of the worksheet was \$246. That was the basis for my advice.

It is my practice, and I believe the practice of most tax return preparers to use the prior year's adjusted gross income exemptions and allowable property tax credit in determining the estimated tax due for the current year, unless there is a reasonable basis for expecting a greater adjusted gross income the following year. In this case there was not.

Your assertion that a penalty is due can be valid only if there is evidence that Mr. xxxxxx could have reasonably expected in 1997 that his tax payable would be more than \$250.00. I don't think there is any basis for that assertion. One of the reasons his 1997 tax was greater than his 1996 tax was that his real estate taxes were lower in 1997 than they were in 1996.

Enclosed is my check for \$52.49 in payment of the asserted penalty and interest. I am making this payment reluctantly because I think the assessment of the penalty is incorrect, but I do not want to engage in a protracted dispute over \$52.49. Particularly is this so when I know that this elderly gentleman will continue to receive notices from you which might be interpreted by him as indicating wrongdoing on his part. That would upset him and it isn't worth upsetting him to simply make a point.

Should, on further consideration, you conclude that there was reasonable cause for not paying estimated tax for 1997, I would appreciate my check being returned to me and abatement of the penalty and interest.

Response

The Illinois Income Tax Act (IITA), Section 804(c)(1)(B)(ii), allows estimated tax payments to be based upon 100 per cent of the prior year's tax. You followed

a generally correct approach. Your result was technically in error, however, because IITA Section 804(f) defines "tax" for purposes of Section 804(c) as follows:

f) Definition of tax. For purposes of subsections (b) and (c), the term "tax" means the excess of the tax imposed under Article 2 of this Act, over the amounts credited against such tax under Sections 601(b)(3) and (4).

This definition allows an offset of Section 601 credits, but not the Section 208 credit for property tax. Offsetting the property tax credit was technically incorrect.

Nonetheless, Form IL-1040-ES certainly invites and encourages subtraction of the property tax credit in all circumstances, although it is a proper procedure only under Section 804(c)(1)(B)(i), where a more general estimate of current year's tax is contemplated. Because the form misleads, it appears that your client has a valid claim for an abatement of penalties and interest based upon reasonable cause. Enclosed is Form BOA-1 and instructions, which you must use to present his claim. Please be advised that we are taking steps to correct Form IL-1040-ES in this regard for this and preceding taxable years.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding any factual situation, please submit all of the information set out in items 1 through 8 of Ill. Adm. Code, Section 1200.110(b).

Sincerely,

Kent R. Steinkamp
Staff Attorney -- Income Tax